



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KURT SWANSON and TAWNY PEREZ, individuals, on behalf of themselves, and on behalf of all persons similarly situated,

Plaintiffs,

vs.

BEST BUY STORES, L.P., a Virginia Limited Partnership; and DOES 1 through 50, inclusive,

Defendant.

Case No. SACV12-1377 AG (ANx)

STANDING PROTECTIVE ORDER

1. PURPOSE AND LIMITS OF THIS ORDER

Discovery in this action is likely to involve confidential, proprietary, or private information requiring special protection from public disclosure and from use for any purpose other than this litigation. Thus, the Court enters this Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it gives from public disclosure and use extends only to the specific material entitled to confidential treatment under the applicable legal principles. This Order does not automatically authorize the filing under seal of material designated under this Order. Instead, the parties must comply

1 with L.R. 79-5.1 if they seek to file anything under seal. This Order does not
 2 govern the use at trial of material designated under this Order.

3 **2. DESIGNATING PROTECTED MATERIAL**

4 **2.1 Over-Designation Prohibited.** Any party or non-party who designates
 5 information or items for protection under this Order as “CONFIDENTIAL,”
 6 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY
 7 CONFIDENTIAL – SOURCE CODE” (a “designator”) must only designate
 8 specific material that qualifies under the appropriate standards. To the extent
 9 practicable, only those parts of documents, items, or oral or written
 10 communications that require protection shall be designated. Designations with a
 11 higher confidentiality level when a lower level would suffice are prohibited. Mass,
 12 indiscriminate, or routinized designations are prohibited. Unjustified designations
 13 expose the designator to sanctions, including the Court’s striking all confidentiality
 14 designations made by that designator. Designation under this Order is allowed only
 15 if the designation is necessary to protect material that, if disclosed to persons not
 16 authorized to view it, would cause competitive or other recognized harm. Material
 17 may not be designated if it has been made public, or if designation is otherwise
 18 unnecessary to protect a secrecy interest. If a designator learns that information or
 19 items that it designated for protection do not qualify for protection at all or do not
 20 qualify for the level of protection initially asserted, that designator must promptly
 21 notify all parties that it is withdrawing the mistaken designation.

22 **2.2 Manner and Timing of Designations.** Designation under this Order
 23 requires the designator to affix the applicable legend (“CONFIDENTIAL,”
 24 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY
 25 CONFIDENTIAL – SOURCE CODE”) to each page that contains protected
 26 material. For testimony given in deposition or other proceeding, the designator shall
 27 specify all protected testimony and the level of protection being asserted. It may
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1 make that designation during the deposition or proceeding, or may invoke, on the
 2 record or by written notice to all parties on or before the next business day, a right
 3 to have up to 21 days from the deposition or proceeding to make its designation.

4 **2.2.1** A party or non-party that makes original documents or materials
 5 available for inspection need not designate them for protection until after the
 6 inspecting party has identified which material it would like copied and
 7 produced. During the inspection and before the designation, all material shall
 8 be treated as **HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY**.
 9 After the inspecting party has identified the documents it wants copied and
 10 produced, the producing party must designate the documents, or portions
 11 thereof, that qualify for protection under this Order.

12 **2.2.2** Parties shall give advance notice if they expect a deposition or
 13 other proceeding to include designated material so that the other parties can
 14 ensure that only authorized individuals are present at those proceedings when
 15 such material is disclosed or used. The use of a document as an exhibit at a
 16 deposition shall not in any way affect its designation. Transcripts containing
 17 designated material shall have a legend on the title page noting the presence
 18 of designated material, and the title page shall be followed by a list of all
 19 pages (including line numbers as appropriate) that have been designated, and
 20 the level of protection being asserted. The designator shall inform the court
 21 reporter of these requirements. Any transcript that is prepared before the
 22 expiration of the 21-day period for designation shall be treated during that
 23 period as if it had been designated **HIGHLY CONFIDENTIAL –**
 24 **ATTORNEY EYES ONLY** unless otherwise agreed. After the expiration of
 25 the 21-day period, the transcript shall be treated only as actually designated.

26 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to
 27 designate does not, standing alone, waive protection under this Order. Upon timely
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1 assertion or correction of a designation, all recipients must make reasonable efforts
2 to ensure that the material is treated according to this Order.

3 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 All challenges to confidentiality designations shall proceed under L.R. 37-1
5 through L.R. 37-4.

6 **4. ACCESS TO DESIGNATED MATERIAL**

7 **4.1 Basic Principles.** A receiving party may use designated material only
8 for this litigation. Designated material may be disclosed only to the categories of
9 persons and under the conditions described in this Order.

10 **4.2 Disclosure of CONFIDENTIAL Material Without Further**
11 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the
12 designator, a receiving party may disclose any material designated
13 CONFIDENTIAL only to:

14 **4.2.1** The receiving party's outside counsel of record in this action
15 and employees of outside counsel of record to whom disclosure is reasonably
16 necessary;

17 **4.2.2** The officers, directors, and employees of the receiving party to
18 whom disclosure is reasonably necessary, and who have signed the
19 Agreement to Be Bound (Exhibit A);

20 **4.2.3** Experts retained by the receiving party's outside counsel of
21 record to whom disclosure is reasonably necessary, and who have signed the
22 Agreement to Be Bound (Exhibit A);

23 **4.2.4** The Court and its personnel;

24 **4.2.5** 4.2.5 Outside court reporters and their staff, professional jury or
25 trial consultants, and professional vendors to whom disclosure is reasonably
26 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

1 **4.2.6** During their depositions, witnesses in the action to whom
 2 disclosure is reasonably necessary and who have signed the Agreement to Be
 3 Bound (Exhibit A); and

4 **4.2.7** The author or recipient of a document containing the material, or
 5 a custodian or other person who otherwise possessed or knew the
 6 information.

7 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**
 8 **ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without**
 9 **Further Approval.** Unless permitted in writing by the designator, a receiving party
 10 may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY
 11 EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE without further
 12 approval only to:

13 **4.3.1** The receiving party's outside counsel of record in this action
 14 and employees of outside counsel of record to whom it is reasonably
 15 necessary to disclose the information;

16 **4.3.2** The Court and its personnel;

17 **4.3.3** Outside court reporters and their staff, professional jury or trial
 18 consultants, and professional vendors to whom disclosure is reasonably
 19 necessary, and who have signed the Agreement to Be Bound (Exhibit A); and

20 **4.3.4** The author or recipient of a document containing the material, or
 21 a custodian or other person who otherwise possessed or knew the
 22 information.

23 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**
 24 **CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY**
 25 **CONFIDENTIAL – SOURCE CODE Material to In-House Counsel or**
 26 **Experts.** Unless agreed to in writing by the designator:
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1 **4.4.1** A party seeking to disclose to in-house counsel any material
2 designated **HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY** must
3 first make a written request to the designator providing the full name of the
4 in-house counsel, the city and state of such counsel's residence, and such
5 counsel's current and reasonably foreseeable future primary job duties and
6 responsibilities in sufficient detail to determine present or potential
7 involvement in any competitive decision-making. In-house counsel are not
8 authorized to receive material designated **HIGHLY CONFIDENTIAL –**
9 **SOURCE CODE**.

10 **4.4.2** A party seeking to disclose to an expert retained by outside
11 counsel of record any information or item that has been designated **HIGHLY**
12 **CONFIDENTIAL – ATTORNEY EYES ONLY** or **HIGHLY**
13 **CONFIDENTIAL – SOURCE CODE** must first make a written request to
14 the designator that (1) identifies the general categories of **HIGHLY**
15 **CONFIDENTIAL – ATTORNEY EYES ONLY** or **HIGHLY**
16 **CONFIDENTIAL – SOURCE CODE** information that the receiving party
17 seeks permission to disclose to the expert, (2) sets forth the full name of the
18 expert and the city and state of his or her primary residence, (3) attaches a
19 copy of the expert's current resume, (4) identifies the expert's current
20 employer(s), (5) identifies each person or entity from whom the expert has
21 received compensation or funding for work in his or her areas of expertise
22 (including in connection with litigation) in the past five years, and (6)
23 identifies (by name and number of the case, filing date, and location of court)
24 any litigation where the expert has offered expert testimony, including by
25 declaration, report, or testimony at deposition or trial, in the past five years.
26 If the expert believes any of this information at (4) - (6) is subject to a
27 confidentiality obligation to a third party, then the expert should provide
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1 whatever information the expert believes can be disclosed without violating
2 any confidentiality agreements, and the party seeking to disclose the
3 information to the expert shall be available to meet and confer with the
4 designator regarding any such confidentiality obligations.

5 **4.4.3** A party that makes a request and provides the information
6 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to
7 the identified in-house counsel or expert unless, within seven days of
8 delivering the request, the party receives a written objection from the
9 designator providing detailed grounds for the objection.

10 **4.4.4** All challenges to objections from the designator shall proceed
11 under L.R. 37-1 through L.R. 37-4.

12 **5. SOURCE CODE**

13 **5.1 Designation of Source Code.** If production of source code is
14 necessary, a party may designate it as HIGHLY CONFIDENTIAL – SOURCE
15 CODE if it is, or includes, confidential, proprietary, or trade secret source code.

16 **5.2 Location and Supervision of Inspection.** Any HIGHLY
17 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made
18 available for inspection, in a format allowing it to be reasonably reviewed and
19 searched, during normal business hours or at other mutually agreeable times, at an
20 office of the designating party's counsel or another mutually agreeable location.
21 The source code shall be made available for inspection on a secured computer in a
22 secured room, and the inspecting party shall not copy, remove, or otherwise transfer
23 any portion of the source code onto any recordable media or recordable device. The
24 designator may visually monitor the activities of the inspecting party's
25 representatives during any source code review, but only to ensure that there is no
26 unauthorized recording, copying, or transmission of the source code.

1 **5.3 Paper Copies of Source Code Excerpts.** The inspecting party may
 2 request paper copies of limited portions of source code that are reasonably
 3 necessary for the preparation of court filings, pleadings, expert reports, other
 4 papers, or for deposition or trial. The designator shall provide all such source code
 5 in paper form, including Bates numbers and the label “HIGHLY CONFIDENTIAL
 6 – SOURCE CODE.”

7 **5.4 Access Record.** The inspecting party shall maintain a record of any
 8 individual who has inspected any portion of the source code in electronic or paper
 9 form, and shall maintain all paper copies of any printed portions of the source code
 10 in a secured, locked area. The inspecting party shall not convert any of the
 11 information contained in the paper copies into any electronic format other than for
 12 the preparation of a pleading, exhibit, expert report, discovery document, deposition
 13 transcript, or other Court document. Any paper copies used during a deposition
 14 shall be retrieved at the end of each day and must not be left with a court reporter or
 15 any other unauthorized individual.

16 **6. PROSECUTION BAR**

17 Absent written consent from the designator, any individual who receives
 18 access to HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
 19 CONFIDENTIAL – SOURCE CODE information shall not be involved in the
 20 prosecution of patents or patent applications concerning the field of the invention of
 21 the patents-in-suit for the receiving party or its acquirer, successor, predecessor, or
 22 other affiliate during the pendency of this action and for one year after its
 23 conclusion, including any appeals. “Prosecution” means drafting, amending,
 24 advising on the content of, or otherwise affecting the scope or content of patent
 25 claims or specifications. These prohibitions shall not preclude counsel from
 26 participating in reexamination or inter partes review proceedings to challenge or
 27 defend the validity of any patent, but counsel may not participate in the drafting of
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1 amended claims in any such proceedings.

2 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
 3 **PRODUCED IN OTHER LITIGATION**

4 **7.1 Subpoenas and Court Orders.** This Order in no way excuses
 5 non-compliance with a lawful subpoena or court order. The purpose of the duties
 6 described in this section is to alert the interested parties to the existence of this
 7 Order and to give the designator an opportunity to protect its confidentiality
 8 interests in the court where the subpoena or order issued.

9 **7.2 Notification Requirement.** If a party is served with a subpoena or a
 10 court order issued in other litigation that compels disclosure of any information or
 11 items designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL –
 12 ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE,
 13 that party must:

14 **7.2.1** Promptly notify the designator in writing. Such notification shall
 15 include a copy of the subpoena or court order;

16 **7.2.2** Promptly notify in writing the party who caused the subpoena or
 17 order to issue in the other litigation that some or all of the material covered
 18 by the subpoena or order is subject to this Order. Such notification shall
 19 include a copy of this Order; and

20 **7.2.3** Cooperate with all reasonable procedures sought by the
 21 designator whose material may be affected.

22 **7.3 Wait For Resolution of Protective Order.** If the designator timely
 23 seeks a protective order, the party served with the subpoena or court order shall not
 24 produce any information designated in this action as CONFIDENTIAL, HIGHLY
 25 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
 26 SOURCE CODE before a determination by the court where the subpoena or order
 27 issued, unless the party has obtained the designator's permission. The designator
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1 shall bear the burden and expense of seeking protection of its confidential material
2 in that court.

3 **8. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

4 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
5 designated material to any person or in any circumstance not authorized under this
6 Order, it must immediately (1) notify in writing the designator of the unauthorized
7 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
8 designated material, (3) inform the person or persons to whom unauthorized
9 disclosures were made of all the terms of this Order, and (4) use reasonable efforts
10 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

11 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
12 **PROTECTED MATERIAL**

13 When a producing party gives notice that certain inadvertently produced
14 material is subject to a claim of privilege or other protection, the obligations of the
15 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
16 This provision is not intended to modify whatever procedure may be established in
17 an e-discovery order that provides for production without prior privilege review
18 pursuant to Federal Rule of Evidence 502(d) and (e).

19 **10. FILING UNDER SEAL**

20 Without written permission from the designator or a Court order, a party may
21 not file in the public record in this action any designated material. A party seeking
22 to file under seal any designated material must comply with L.R. 79-5.1. Filings
23 may be made under seal only pursuant to a court order authorizing the sealing of the
24 specific material at issue. The fact that a document has been designated under this
25 Order is insufficient to justify filing under seal. Instead, parties must explain the
26 basis for confidentiality of each document sought to be filed under seal. Because a
27 party other than the designator will often be seeking to file designated material,
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1 cooperation between the parties in preparing, and in reducing the number and extent
 2 of, requests for under seal filing is essential. If a receiving party's request to file
 3 designated material under seal pursuant to L.R. 79-5.1 is denied by the Court, then
 4 the receiving party may file the material in the public record unless (1) the
 5 designator seeks reconsideration within four days of the denial, or (2) as otherwise
 6 instructed by the Court.

7 **11. FINAL DISPOSITION**

8 Within 60 days after the final disposition of this action, each party shall
 9 return all designated material to the designator or destroy such material, including
 10 all copies, abstracts, compilations, summaries, and any other format reproducing or
 11 capturing any designated material. The receiving party must submit a written
 12 certification to the designator by the 60-day deadline that (1) identifies (by
 13 category, where appropriate) all the designated material that was returned or
 14 destroyed, and (2) affirms that the receiving party has not retained any copies,
 15 abstracts, compilations, summaries, or any other format reproducing or capturing
 16 any of the designated material. This provision shall not prevent counsel from
 17 retaining an archival copy of all pleadings, motion papers, trial, deposition, and
 18 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
 19 expert reports, attorney work product, and consultant and expert work product, even
 20 if such materials contain designated material. Any such archival copies remain
 21 subject to this Order.

22
 23 IT IS SO ORDERED.

24
 25 DATED: January 15, 2014

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 27 United States District Judge/Magistrate Judge
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EXHIBIT AAGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
 [print or type full address], declare under penalty of perjury that I have read in its
 entirety and understand the Protective Order that was issued by the United States
 District Court for the Central District of California on _____ [date]
 in the case of *Kurt Swanson and Tawny Perez v. Best Buy Stores, L.P.*, Case No.
 SACV12-1377 AG (ANx). I agree to comply with and to be bound by all the terms
 of this Protective Order, and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment for contempt. I solemnly
 promise that I will not disclose in any manner any information or item that is
 subject to this Protective Order to any person or entity except in strict compliance
 with this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing this Order, even if
 such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full
 name] of _____ [print or type full
 address and telephone number] as my California agent for service of process in
 connection with this action or any proceedings related to enforcement of this Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____